

DEC 24 2008

JOHN F. CORCORAN, CLERK
BY: 
DEPUTY CLERK

THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

WAYMAN TURNER,
Plaintiff(s),

Civil Action No. 7:08-cv-00524

v.

By: Hon. Michael F. Urbanski
United States Magistrate Judge

BRYAN WATSON, ET AL.,
Defendant(s).

ORDER

It appears to the court that the plaintiff has now complied with all of the requirements for filing a prisoner civil rights action pursuant to 42 U.S.C. § 1983. By memorandum opinion and order entered December 22, 2008, the United States District Judge assigned to this case dismissed all of plaintiff's claims, except his First Amendment claim regarding prison officials' decision to confiscate one issue of a magazine to which plaintiff subscribes. If plaintiff wishes to proceed with this lawsuit as to this one claim, he must first consent to payment of the full \$350.00 filing fee to be withheld in installments from his inmate trust account. See Para. (1). Accordingly, it is now **ORDERED** as follows:

- (1) The plaintiff is directed to execute the enclosed consent to withholding of fees from his inmate account. FAILURE TO RETURN THE SIGNED CONSENT FORM TO THE COURT WITHIN TWENTY (20) DAYS OF THE DATE OF ENTRY OF THIS ORDER SHALL RESULT IN DISMISSAL OF THIS ACTION WITHOUT PREJUDICE.
- (2) Once the plaintiff returns the consent form and the complaint is served, the defendants shall file their responsive pleadings within sixty (60) days from the date set forth on the Notice of Lawsuit if the defendants choose to return the Waiver of Service of Summons form within thirty (30) days of that same date. See gen. Rule 4(d) of the Federal Rules of Civil

Procedure. The defendants may choose to waive the filing of a reply pursuant to 42 U.S.C. § 1997e(g). Such a waiver shall be made by way of a formal pleading.

- (3) If the defendants dispute the plaintiff's assertions that he has fully exhausted administrative remedies, the defendants may raise this issue by way of a motion to dismiss for failure to exhaust. Defendants other than employees of the Virginia Department of Corrections may wish to attach to their motion to dismiss a copy of the applicable grievance procedure.
- (4) Both sides are advised that pursuant to Standing Order of Court entered May 3, 1996, and Rule 83(b) of the Federal Rules of Civil Procedure, the Court may direct the parties in a prisoner civil rights case to file a motion for summary judgment supported by affidavits.
- (5) The plaintiff is hereby granted 20 days from the receipt of a copy of defendants' answer and other responsive pleadings within which to file opposing affidavits or other appropriate material. Failure to so respond may result in the entry of judgment against the plaintiff on the basis of defendants' responsive pleading.
- (6) The plaintiff shall notify the Court immediately upon his transfer or release and shall provide a new address if known. FAILURE TO NOTIFY THE COURT OF SUCH A CHANGE OF ADDRESS WILL RESULT IN THE DISMISSAL OF THIS CASE.

The Clerk is directed to send copies of this Order to all parties.

ENTER: This 24th day of December, 2008.



United States Magistrate Judge

**INMATE CONSENT FOR WITHHOLDING OF PAY
FOR ASSESSED FILING FEE**

WAYMAN TURNER,
Plaintiff,

Civil Action No. 7:08-cv-00524

v.

CONSENT TO FEE

BRYAN WATSON, ET AL.,
Defendant(s).

I, **Wayman Turner, #367607**, hereby consent for the appropriate prison officials to withhold from my prison account an initial payment of **\$5.40** and to collect on a continuing basis each month, an amount equal to 20% of each prior month's income, until such time as the filing fee of \$350.00 has been collected in full. Each time the collection of payments reaches the amount of \$10.00, the Trust Officer shall forward the interim payment to the Clerk's Office, U. S. District Court, P. O. Box 1234, Roanoke, VA 24006, until such time as the fees are paid in full. By executing this document, I also authorize withholding of any amount of costs, sanctions, and/or fees which may be imposed by the Court as a result of or during this litigation.

SIGNATURE OF PLAINTIFF

(For Trust Accounts Officer Use)

BALANCE DUE (Not to exceed \$350.00)	AMOUNT WITHHELD	MONTH WITHHELD	PRIOR MONTHS INCOME
\$350.00			